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prove the existence of a free will with his metaphysical and semi-theological arguments. Furthermore, he falls into the common error of imagining that the theory of determinism implies individual irresponsibility for conduct. It goes without saying that the determinist regards the individual as a center of forces which determine conduct in large part so that the individual can be held responsible for his conduct in so far as it is self-determined.

The last three chapters are devoted to a discussion of the three types of individualization; namely, legal, judicial, and administrative. This discussion is very suggestive, but falls short of outlining a complete system of individualization.

Despite the faults and shortcomings of this book which have been pointed out it is of great historical significance in this movement towards individualizing the treatment of the criminal. It is therefore a fortunate thing that it is now available in the English language and should be widely read by lawyers.

Maurice Parmelee.

CAPTURE IN WAR ON LAND AND SEA. By HANS WEHBERG, DR. JUR. With an introduction by JOHN M. ROBERTSON, M. P. London: P. S. KING & SON. 1911. pp. xxxv, 210.

This volume, which is translated from the German, is devoted to the advocacy of the abolition of the law of prize, or, in other words, of the capture of private property at sea. Of the introduction by Mr. Robertson, it suffices to say that it is characterized by dogmatic approval of the author's thesis, rather than by a technical familiarity with the subject. "Whom," asks Mr. Robertson, "do we dream of invading? What Power fears to be invaded by us?" He does not deem it necessary to answer an inquiry that is so absurd as to impute a possibly warlike purpose to his own people. In thinking thus, he is in complete accord with writers in all other countries. Each of them assumes that his own countrymen above all things desire peace; and, if we could accept this assumption as correct, we should be justified in believing that the millenium had already arrived. Dr. Wehberg discusses his subject with much learning, but even he goes so far as to affirm that "under present-day conditions * * * Modern Governments only have recourse to wars in cases of absolute necessity" (p. 114). As this statement was written before the affair of Tripoli, he has no occasion to discuss it; but it does not appear that he was aware of the urgent conditions which were so soon to render necessary a declaration of war by Italy. Possibly they were not germane to his argument. However this may be, the contention that nothing short of absolute necessity will induce modern nations to engage in war is an insecure foundation on which to build. We think, too, that with all his careful examination of texts, Dr. Wehberg goes too far in speaking of the United States as having proposed in 1856 "the total abrogation of the right of prize." The proposal was expressly subject to the exception of contraband, and admittedly was not intended to supersede the law of blockade. The proposal therefore was in effect only to exempt from capture the enemy's merchant vessels and enemy's goods thereon laden, when no question of contraband or of blockade was involved; and it left the law of contraband and of blockade in full force as to neutral vessels and property. This is very different from what orators and even diplomatists sometimes tell us, but it is the sober fact. It is evident that something more than what the

author calls "the firm guidance of North America" will be needed to bring about "the entire abrogation of the law of prize at sea" (pp. 190-191). Apparently the first requisite will be to create a clear understanding of what such abrogation comprehends, so that when we talk of the abolition of the law of prize we may either actually mean what we say or else say only what we mean.

J. B. Moore.

THE LAW OF EVIDENCE. By SIDNEY L. PHIPSON. Fifth edition. London: STEVENS & HAYNES. 1911. pp. lxxix, 743.

A treatise on evidence which has passed through five English editions in less than twenty years must have merits which make a strong appeal to the profession. While the freshness and fulness of the work, its abundant use of cases and its apposite grouping and arrangement of authorities, make it a valuable work of reference for law students, it is distinctly a practitioner's handbook. With its 6,000 citations, which, the author believes, "practically exhaust the English case-law of the subject," and with its avoidance of theorizing and speculation, it supplies the greatest quantity of digested and ready-to-be-used information as to the law of evidence of any book with which the writer is acquainted. Of particular value to one who would "run down" a point through all the cases bearing on it, is the digest of contrasted decisions arranged in parallel columns, on the one hand the cases in which evidence of a particular sort was admitted and on the other where it was held inadmissible. As the cases all deal with the law of a single jurisdiction and not with that of fifty competing jurisdictions, the result is not the chaos which such a method would result in on our side of the water but an orderly arrangement of authorities through which the clear, advancing line of the law can be traced.

All this might have been said of any of the earlier editions of Mr. Phipson's work. In plan and scope it remains the same. What is new is such change as has been called for by the passing of "a considerable number of statutes dealing either wholly or in part with the subject of evidence," and a thorough revision of the text and notes, involving the incorporation of the results of some five hundred new decisions rendered since the completion in 1907 of the fourth edition. The index, already one of the best of its kind, has been enlarged and made still more useful. The principal statutes, such as the Criminal Evidence Act (1898) and the Oaths Acts of 1838, 1888, and 1909, are printed in an appendix.

G. W. Kirchwey.

OBSCENE LITERATURE AND CONSTITUTIONAL LAW. By THEODORE SCHROEDER. New York. Privately Printed. 1911. pp. 439.

It is a pity that this serious plea for cleanness of thought and freedom of speech should not have been presented in more readable form. Though put forth as a book, it is in reality a collection of pamphlets on various aspects of the problem which the author has published from time to time in many different periodicals and which are here brought together "for forensic uses." For this purpose—as an arsenal of arguments, illustration, satire, and eloquence to be drawn on by public advocates of "unlicensed printing"—the work leaves little to be desired. But the reader who would, at a reasonable expenditure of time, get a clear view of the argument, is dismayed by the overlapping of chapters, the vain repetitions, the heaped up